* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: April 26, 2007
% Date of decisiion May 18, 2007

\+ FAO NO 709/2003 & CMs 1456-1457/2003

\# KRISHAN KUMAR .... APPELLANT
! Through: Mr. Puneet Bhatnagar, Advocate

v e r s u s

$ SHANKARI .... RESPONDENT
^ Through: Mr. J.B. Ravi, Advocate

CORUM:
HON'BLE DR. JUSTICE S.MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in Digest?

: **Dr. S.Muralidhar, J.**

1. This appeal is directed against the judgment dated 16.5.2003 passed by the learned Additional District Judge, Delhi in H.M.A. 382/01/2000 by which the Appellant's petition seeking dissolution of his marriage with the Respondent on the ground of cruelty and desertion under Section 13(1)(ia)(ib) of the Hindu Marriage Act, 1955 ('Act') was dismissed.

2. The marriage of the parties took place on 31.5.1987 and a child was born to them on 11.8.1988.

3. The case of the appellant was that soon after the marriage, the respondent misbehaved and used to quarrel with the members of the appellant's family on petty issues; she used to leave the matrimonial house without his permission and consent; that the parents of the respondent used to interfere in the matrimonial life of the respondent and that the respondent used to give rude replies to him and his parents. It is stated that on 16.6.1987 while going for a bath, appellant asked his sister-in-law (Bhabhi) for a towel which his Bhabhi immediately gave him and on that the respondent got very angry and shouted in front of all the family members that henceforth he should ask for everything from his Bhabhi and he should keep the Bhabhi with him if he so wanted. The second allegation is that on 25.6.1987 the respondent told the appellant, in the presence of his family members, that she wanted to marry his elder brother and had not given her consent for her marriage with the appellant as he was neither educated nor a government employee. The third incident is that on 15.5.1990 when the elder brother took the child in his lap and started to feed him, the respondent started shouting and accusing his elder brother of wanting to kill her son. The appellant alleged that the respondent thrashed the child in August 1991 when he refused to go to school. She generally mistreated the child. According to the appellant, on 24.8.1993 the brothers of the respondent came to his

clinic and tried to assault him. On the death of the appellant's elder brother on 2.4.1994, it is alleged that the respondent, in front of his mother and Bhabhi declared that she would have been happy if the appellant had died. The respondent took an employment in April 1994. It is alleged that the while working in a factory the respondent became friendly with her superior officer Mr. Rao. In 1997 when Mr. Rao took his employment in another garment export company she also joined there. It is alleged that in April 1999 Mr. Rao resigned his job and went to Coimbatore in Tamil Nadu and the respondent also wanted to go to Coimbatore but the appellant and his family members resisted. On 15.4.1999 the respondent went to her mother's house without informing him and his family members. On 18.4.1999 she visited the appellant with her elder brother who told the appellant that the respondent would stay for a few days with him for a change. However, the respondent did not return to the matrimonial home thereafter. The appellant also alleged that on 12.4.1999 the respondent had performed some magical rites at the matrimonial home as a result of which his mother fell ill.

4. The version of the respondent is very different. According to her, in April 1999 she was compelled to leave the matrimonial home and was not allowed to return. She states that soon after marriage she was surprised to find that the appellant asked his Bhabhi to serve him food and make his bath ready. Although, as a wife, the respondent wanted to do perform these tasks, she was neither asked nor permitted to.

When she protested the appellant told her not to interfere in his daily routine. She complained about his behaviour to his mother and aunt in vain. During her pregnancy, when she was staying at her parental home, neither the appellant nor his family members visited her. After the birth of the child, they did not come to see the child and take her back to the matrimonial home. She returned on her own. She denied the allegations of her ill-treating the child and stated that she was having no grudge against the elder brother of the appellant. She stated that it was the mother, aunt and bhabhi of the appellant who used to pick up a quarrel with her often. She was not having any objectionable relations with Mr. Rao. She denied having performed any magical rites as alleged. On 26.2.1999 when she suffered a serious attack of arthritis, the doctor advised her rest for fifteen days. She went to her mother's house and stayed there till March 1999. In April 1999 when she returned to the matrimonial home and told the appellant that she wished to leave the job, he got agitated and asked her to leave the matrimonial home.

5. The Trial Court framed one issue each on the questions of cruelty and desertion. The appellant has examined himself as PW-1 and his Bhabhi as PW-2. The respondent has examined herself as R-1 and her sister as RW-2.

6. The Trial Court found that the appellant had failed to prove his allegation that the respondent used to suspect his character in

relation to his bhabhi. No such suggestion was put to the respondent in the cross-examination. The one incident of 16.6.1987 the respondent objected to the demand of towel by the appellant from his bhabhi was not sufficient to presume that the respondent had suspected the character of the appellant. No serious incident subsequent to this date had been narrated by the appellant. As regards the allegation that the respondent was having an intimate relationship with her boss Mr. Rao, the Trial Court found that there was no basis for this suspicion. The appellant had never made any complaint in this regard against Mr. Rao and nothing had been brought on record to show if the respondent ever contacted Mr. Rao after he shifted to Coimbatore in April 1999. As regards the behaviour with son, the Trial Court concluded that the respondent being the mother of the child was within her right to choose the school which the child should attend. Her objection to her bhabhi interfering on this issue would held to be justified. The Trial Court, in the application moved by the respondent under Section 26 of Act for grant of visitation rights, noticed that the child never refused to visits by his mother. For the above reasons, the Trial Court concluded that ground of cruelty had not been established.

7. As regards the ground of desertion, the Trial Court found that since the petition was filed on 22.7.2000 and the parties had admittedly lived together till April 1999, the mandatory two-year separation prior to the filing of the petition was not fulfilled. No complaint had been

lodged by the appellant against the behavior and conduct of the respondent during her stay at the matrimonial home for a long period of 13 years when they lived together. They were living separately since 18.4.1999 and the appellant had not made any efforts at reconciliation or to bring back the respondent to the matrimonial home. Further in his cross-examination, the appellant categorically refused to live with the respondent and said that he did not want to keep the respondent. On the contrary, the respondent, in her testimony, expressed her desire to live with the appellant. The other incidents were held either to be not proved or to constitute the ordinary wear and tear of married life.

8. Learned counsel for the appellant assailed the impugned judgment essentially on the appreciation by the Trial Court of the evidence concerning the appellant's relationship with his bhabhi. He pointed to the suggestion put to the respondent during her cross-examination that she had suspected the character of the appellant in relation to his bhabhi. He pointed to the replies given by the respondent by way of denial of those suggestions. Her replies were to be following effect:

> "It is incorrect that I caused mental torture to the petitioner and his family members by leveling false allegations against bhabhi of the petitioner whom he considered like his mother. It is incorrect that my bhabhi used to perform all my function, i.e., serving me to breakfast etc. It is incorrect that when the respondent objected I became angry with the respondent."

According to the counsel, these replies to the suggestions made by the respondent indicated that she suspected the character of the appellant in relation to his bhabhi.

9. This Court is unable to agree with this submission. A careful reading of the entire evidence shows that this allegation is a mere imagination of the appellant who appears to have nurtured this thought throughout the 13 years that the parties lived together. This is a solitary incident of 16.6.1987, less than a month after the marriage that took place on 31.5.1987. The suggestions made to the respondent have all been denied. There is no convincing evidence to substantiate the appellant's allegation that he was subjected to mental cruelty on account of the respondent suspecting his character.

10. Learned counsel for the appellant attempted to show through the evidence of the appellant himself that the other incidents narrated by the appellant stood proved. This Court, upon examining the depositions of the appellant and his bhabhi, is unable to find any error in the conclusion reached by the Trial Court

11. Then it is urged that the respondent had filed a false criminal complaint against the appellant and his family members and at the time of framing the charges in the Court of the Metropolitan Magistrate, the appellant was discharged. It is stated that the

respondent went in appeal against that order and the Sessions Court ordered framing of charges against which the appellant has preferred a revision petition which is still pending in this Court. It is stated that this also constitutes cruelty.

12. This Court is not inclined to entertain this plea. The mere fact that the criminal proceedings has been instituted by the respondent would not by itself constitute cruelty and has to be seen in the context of the overall relationship of the parties. The High Courts of Andhra Pradesh and Delhi have held that even if there was an acquittal in the criminal proceedings that by itself would not constitute cruelty. (***Gajala Shankar v. Anuradha*** AIR 2006 AP 65 and ***Sheo Nath Singh v. Sujata*** 2007 III AD (Del) 673.

13. Learned counsel for the appellant concluded his submissions by referring to the fact that the parties have been living separately since 1999. He submitted that since the respondent had not made any effort to come back to the matrimonial home, it was clear that there was an irretrievable breakdown of marriage. Relying on the judgment of the Hon'ble Supreme Court in ***Durga Prasanna Tripathy v. Arundhati Tripathy*** AIR 2005 SC 3297 and ***Geeta Jagdish Mangtani v. Jagdish Mangtani*** AIR 2005 SC 3508, learned counsel pleaded that the marriage should be dissolved on this ground.

14. In the instant case, the Trial Court has concluded that the ground of desertion is not proved and has further found that the appellant had not made any effort at reconciliation. Further, the evidence on record shows that the appellant has treated the respondent with cruelty and has stated in his evidence that he does not wish to live with her. As pointed out by the Hon'ble Supreme Court in ***Shyam Sunder Kohli v. Sushma Kohli*** 2004 (2) HLR 513, the plea of the irretrievable break-down of marriage by erring his spouse ought not to be entertained.

14. For all of the above reasons, there is no merit in this appeal and it is dismissed with costs of Rs.5,000/- which will be paid by the appellant to the respondent within a period of four weeks. The pending applications also stand disposed of.

(S.MURALIDHAR)
JUDGE

May 18, 2007
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